RECORD AND BRIEFS

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No. 16-466

IN THE
Supreme Court of the United States

BRISTOL-MYERS SQUIBB COMPANY,
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA,
SAN FRANCISCO COUNTY, ET AL.,
Respondents.

On Writ of Certiorari to the Supreme Court of California

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OUT OF TIME AND BRIEF OF TV AZTECA, S.A.B. DE C.V., PATRICIA CHAPOY, AND PUBLIMAX, S.A. DE C.V. AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OUT OF TIME

Pursuant to Rule 21 of the Rules of this Court, *amici* TV Azteca, S.A.B. de C.V., Patricia Chapoy, and Publimax, S.A. de C.V., respectfully move for leave to file the accompanying brief as *amici curiae* in support of petitioner out of time. Counsel for both petitioner and respondents have consented to the filing of *amici*'s brief out of time.[1]

Amici are Mexican TV broadcasters and journalists who face civil litigation in Texas state court, based upon an extreme decision of the Texas Supreme Court that affirmed the exercise of personal jurisdiction in a defamation case brought by Mexican national plaintiffs, and where all of the operative facts occurred in and concern Mexico, not Texas. *See*

[1] Counsel for both petitioner and respondents previously submitted letters granting blanket consent to the filing of *amicus* briefs in this case.

TV Azteca, S.A.B. de C.V. v. Ruiz, 490 S.W.3d 29 (Tex. 2016), *pet. for cert. pending*, No. 16-481 (U.S. filed Oct. 7, 2016) (briefs distributed on February 22, 2017, for conference on March 17, 2017). *Amici* TV Azteca (a Mexican national network) and affiliated persons and entities face suit in Texas notwithstanding that they have no connection to the State other than the fact that their television broadcasts that originate and air in Mexico may be picked up in southern Texas through over-the-air signal spillover (and through cable carriers that, without the consent of the broadcasters, carry such over-the-air signals). The Texas Supreme Court has held that the State can exercise personal jurisdiction over TV Azteca and Publimax because of general marketing and other commercial efforts in Texas that are wholly unrelated to their allegedly defamatory television broadcasts. *Amici* thus have a substantial interest in the outcome of this case.

Amici share petitioner's belief that the law of personal jurisdiction should promote the core policies of the Due Process Clause, including permitting potential defendants to predict and control their jurisdictional exposure. Moreover, like petitioner, *amici* believe that causation is an indispensable component of the specific-jurisdiction inquiry.

On January 19, 2017, the Court granted the petition for a writ of certiorari in this case. Pursuant to this Court's Rule 25.1, petitioner's opening merits brief was due 45 days after the petition was granted, which in this case was Monday, March 6, 2017.[2]

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[2] Because the 45th day after the petition was granted fell on Sunday, March 5, pursuant to this Court's Rule 30, petitioner's opening merits brief would have been considered timely filed on Monday, March 6.

Pursuant to this Court's Rule 37.3(a), *amicus* briefs supporting a petitioner are due 7 days after the petitioner's brief is filed. With a due date of March 6 for petitioner's opening merits brief in this case, counsel for *amici* fully expected to file the accompanying *amicus* brief on March 13 and had taken all the necessary steps to ensure a timely filing. However, unbeknownst to counsel for *amici* until late in the afternoon on March 8, counsel for petitioner filed its opening merits brief on March 1, 2017, five days before it was due. That unexpectedly early filing triggered this Court's Rule 37.3(a) 7-day filing requirement, which meant that *amici*'s brief was due for filing that very same day, March 8.

Although counsel for *amici* worked diligently to finalize the brief for timely filing under the unexpectedly early filing schedule, counsel was unable to complete the brief, to have it printed and bound, and to obtain the necessary client approvals from his foreign clients in time to meet the new deadline.

For the foregoing reasons and for good cause, counsel for *amici* respectfully move for leave to file the accompanying brief as *amici curiae* in support of petitioner out of time.

Respectfully submitted,

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INTEREST OF *AMICI CURIAE*[1]

Amici are Mexican TV broadcasters and journalists who face civil litigation in Texas state court, based upon an extreme decision of the Texas Supreme Court that affirmed the exercise of personal jurisdiction in a defamation case brought by Mexican national plaintiffs, and where all of the operative facts occurred in and concern Mexico, not Texas. *See TV Azteca, S.A.B. de C.V. v. Ruiz*, 490 S.W.3d 29 (Tex. 2016), *pet. for cert. pending*, No. 16-481 (U.S. filed Oct. 7, 2016) ("*TV Azteca* Cert. Pet."). *Amici* TV Azteca (a Mexican national network) and affiliated persons and entities face suit in Texas notwithstanding that they have no connection to the State other than the fact that their television broadcasts that originate and air in Mexico may be picked up in southern Texas through over-the-air signal spillover (and by cable carriers that, without the consent of the broadcasters, carry such over-the-air signals). The Texas Supreme Court has held that the State can exercise personal jurisdiction over TV Azteca and Publimax because of general marketing and other commercial efforts in Texas that are wholly unrelated to their allegedly defamatory television broadcasts. *Amici* thus have a substantial interest in the outcome of this case.

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* represents that it authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.3(a), counsel for *amici* also represents that all parties submitted letters granting blanket consent to the filing of *amicus* briefs and further consented to the filing of this brief out of time.

Amici share petitioner's belief that the law of personal jurisdiction should promote the core policies of the Due Process Clause, including permitting potential defendants to predict and control their jurisdictional exposure. Moreover, like petitioner, *amici* believe that causation is an indispensable component of the specific-jurisdiction inquiry.

SUMMARY OF ARGUMENT

The Court should reaffirm that specific jurisdiction requires that the defendant's forum-related conduct must have a causal connection to the plaintiff's claims. In recent years, this Court has explained that, under the rubric of specific jurisdiction, a defendant's "*suit-related conduct* must create a substantial connection with the forum State," *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (emphasis added), and that lower courts should take care not to "elide[] the essential difference between case-specific and all-purpose (general) jurisdiction," *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 927 (2011). As nine federal courts of appeals and numerous state courts of last resort have already held in the decades since this Court's decision in *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984),[2] causation is critical to promoting the core policies of the Due Process Clause, which seeks to ensure predictability and fairness in the exercise of personal jurisdiction. In short, specific and general jurisdiction must be confined to their appropriate and separate spheres for potential defendants to predict and control their jurisdictional exposure.

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[2] The First, Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits – as well as at least nine state courts of last resort, approximately half to address the issue – have adopted a causation requirement. *See TV Azteca* Cert. Pet. 13-16 & nn.3-5.

The Court should reverse the decision below because the "substantial connection" test adopted by the California Supreme Court contravenes these principles. In eschewing a causation requirement, the court below improperly blended together suit-related and suit-unrelated contacts and thereby undermined the distinction between specific and general jurisdiction that is critical to due process protections.

Although *Bristol-Myers Squibb* concerns a nationwide products-liability action brought in California state court, the substantial-connection test has been applied by a stubborn minority of courts in a wide variety of legal contexts. The Texas Supreme Court's decision in *TV Azteca* exemplifies the erroneous approach that such courts have taken: it found *amici* were subject to specific jurisdiction in Texas state court based upon news reports that were made in Mexico, for Mexican viewers, by Mexican networks and television stations featuring Mexican journalists, relying upon Mexican sources, and concerning the activities of Mexican citizens in Mexico and Brazil. *TV Azteca*, 490 S.W.3d at 48.

The Texas Supreme Court reached this counter-intuitive conclusion by virtue of a "substantial connection" test that, like the one applied by the California courts, expressly disavows any requirement of causation. As the Texas Supreme Court explained, the substantial-connection test "does not require proof that the plaintiff would have no claim 'but for' the contacts, or that the contacts were a 'proximate cause' of the liability." *Id.* at 52-53 (quoting *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 584 (Tex. 2007)). Rather, the Texas Supreme Court found *amici* were subject to specific jurisdiction based upon "additional conduct" in the forum state

"beyond the particular business transaction at issue" (*i.e.*, the alleged defamatory newscasts that gave rise to the lawsuit), including a few sporadic and unrelated business trips made by one of the defendants, former office space, and general advertising efforts in southern Texas. Like its counterpart in California, therefore, the Texas Supreme Court mixed and matched suit-related and suit-unrelated conduct, blurring the jurisdictional inquiry beyond recognition. *Amici*'s case demonstrates that a substantial-connection approach unmoored to causation principles undermines the Due Process Clause's goals of consistent and predictable jurisdictional results.

ARGUMENT

I. THE COURT SHOULD ADOPT A CAUSATION STANDARD OF SPECIFIC JURISDICTION AND REVERSE THE DECISION BELOW

A. The Court Should Adopt A Causation Requirement To Separate Specific From General Jurisdiction And Promote Predictability In Jurisdictional Results

The requirement of a causal connection is an indispensable element of the specific-jurisdiction inquiry, separating suit-related contacts from suit-unrelated contacts. To ensure predictability and fairness in jurisdictional outcomes, the Court should hold that specific jurisdiction requires a showing of a causal connection between the plaintiff's cause of action and the defendant's forum-state conduct.

1. This Court has explained that, "[i]n contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). The specific-

jurisdiction inquiry thus "'focuses on "the relationship among the defendant, the forum, and the litigation."'" *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984)). In *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), this Court recognized that, as it has "increasingly trained on the relationship among the defendant, the forum, and the litigation, *i.e.*, specific jurisdiction, general jurisdiction has come to occupy a less dominant place in the contemporary scheme." *Id.* at 758 (citation and footnote omitted).

The specific-jurisdiction test has two core components. First, a defendant must have "purposefully avail[ed] itself of the privilege of conducting activities within the forum State" or purposefully directed activities toward the forum state. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). Second, specific jurisdiction requires that the controversy be "related to or 'arise[] out of' a defendant's contacts with the forum," *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) – which is often referred to as the "nexus" or "relatedness" element of the specific-jurisdiction inquiry.[3]

2. As this Court has explained, "[f]or a State to exercise jurisdiction consistent with due process, the defendant's *suit-related conduct* must create a substantial connection with the forum State." *Walden*, 134 S. Ct. at 1121 (emphasis added). The "nexus" or "relatedness" element is the key to policing this distinction between suit-related and suit-unrelated conduct. While the purposeful-availment prong simply

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[3] If both of those requirements are met, courts then must consider whether the exercise of personal jurisdiction comports with "fair play and substantial justice." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985).

asks whether the defendant deliberately conducted business in the forum state, the nexus element is the "divining rod that separates specific jurisdiction cases from general jurisdiction cases," *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 714 (1st Cir. 1996), and ensures that personal jurisdiction in the forum is "reasonably foreseeable," *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 322 (3d Cir. 2007).

In light of these principles, nine federal courts of appeals have held that, to show a specific-jurisdiction nexus, there must be some causal connection between the plaintiff's legal claim and the defendant's forum-state conduct. *See TV Azteca* Cert. Pet. 13-16 & nn.3-5.[4] And nine state courts of last resort – or about half to squarely consider the issue – have reached the same conclusion. *See id.* These courts have recognized that only a causation-based nexus test serves the "basic function" of suit-related specific jurisdiction. *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 385 (9th Cir. 1990) (requirement of some causation "is consistent with the basic function of the 'arising out of' requirement – it preserves the essen-

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[4] Among federal circuits, only the Second and Federal Circuits arguably have embraced a substantial-connection test rather than a causation-based rule. *See Chew v. Dietrich*, 143 F.3d 24, 29 (2d Cir. 1998) (adopting sliding-scale approach under which the nexus requirement can be loosened for defendants with "more substantial" overall ties to the forum). Even in the Second Circuit, however, more recent district court decisions have stated that causation is required. *See Gucci Am., Inc. v. Weixing Li*, 135 F. Supp. 3d 87, 98 (S.D.N.Y. 2015) (stating that, under Second Circuit law, defendant's contacts must at minimum be the "'but for' cause of the plaintiff's injury"). The Federal Circuit has stated in *dicta* that its nexus test is "far more permissive than either the 'proximate cause' or the 'but for' analyses." *Avocent Huntsville Corp. v. Aten Int'l Co.*, 552 F.3d 1324, 1337 (Fed. Cir. 2008).

tial distinction between general and specific jurisdiction"), *rev'd on other grounds*, 499 U.S. 585 (1991).

Without a requirement of causation, lower courts applying the "substantial connection" rule will remain free to shoehorn into the specific-jurisdiction analysis suit-unrelated contacts, such as general business, advertising, and sales activities in the forum state. *See Goodyear*, 564 U.S. at 927 (reversing North Carolina Supreme Court where personal-jurisdiction analysis "elided the essential difference between case-specific and all-purpose (general) jurisdiction"); *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1078 (10th Cir. 2008) (noting that "substantial connection" test "inappropriately blurs the distinction between specific and general personal jurisdiction" and "improperly conflates these two analytically distinct approaches to jurisdiction"); Lisa Sandstrom Simard, *Meeting Expectations: Two Profiles for Specific Jurisdiction*, 38 Ind. L. Rev. 343, 366 (2005) (noting substantial-connection test has "inherent tendency to dilute the requirements of both specific and general personal jurisdiction").

Shoppers Food Warehouse v. Moreno, 746 A.2d 320 (D.C. 2000), illustrates the fundamental shortcomings of the substantial-connection test. There, the plaintiff slipped and fell on a piece of okra at one of the defendant's Maryland grocery stores. *Id.* at 323. A divided D.C. Court of Appeals held that the grocer was subject to specific jurisdiction in the District because it regularly advertised in *The Washington Post*, even though there was no evidence that the plaintiff saw or acted on those advertisements. *See id.* at 338 (Schwelb, J., dissenting). The court majority explained that, because the defendant "advertis[ed] extensively and over a substantial period of time in

the District's major circulation newspaper, Shoppers could be sued in the District on a claim similar to that filed by Ms. Moreno," even if Ms. Moreno's particular injuries did not result from the advertising. *Id.* at 336. That approach is nothing more than watered-down general jurisdiction under a new name. The grocery chain's advertising in *The Washington Post* had nothing to do with whether it negligently left okra in its aisles and caused the plaintiff's slip-and-fall. As *Moreno* demonstrates, the non-causation "substantial connection" line of reasoning is fundamentally at odds with *Walden*'s instruction that, under specific as opposed to general jurisdiction, "the defendant's suit-related conduct must create a substantial connection with the forum State." 134 S. Ct. at 1121.

3. The causal-connection rule of specific jurisdiction also would promote the core purposes of predictability and fair notice underlying due process limitations on the exercise of personal jurisdiction. The "Due Process Clause is supposed to bring 'a degree of predictability to the legal system.' It should allow out-of-state residents to 'structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'" *Sandy Lane Hotel*, 496 F.3d at 321 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). Due process thus requires that defendants have "'fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign.'" *Burger King*, 471 U.S. at 472 (quoting *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring in the judgment)) (alteration in original).

The majority of courts, here again, have recognized the importance of causation in ensuring predictable results in applying the doctrine of specific jurisdiction. A causation requirement ensures that specific jurisdiction is confined to cases that arise as the direct and foreseeable result from the out-of-state defendant's forum-state activities. *See Sandy Lane Hotel*, 496 F.3d at 321 (without causation requirement, nexus inquiry becomes "freewheeling totality-of-the-circumstances" analysis and, "when the only rule is that each case is different, then in no case can the result safely be predicted"); *see also* Victor N. Metallo, *"Arise Out of" or "Related to": Textualism and Understanding Precedent*, 17 Wash. & Lee J. Civil Rts. & Soc. Just. 415, 443 (2011) ("a test that does not confine contacts to two discernable spheres fails to place defendants on notice of where they stand" and thus prevents parties from "control[ling] their jurisdictional exposure").

B. The Court Should Reverse The Decision Below, Which Eschewed Causation And Blended Principles Of Specific And General Jurisdiction

In *Bristol-Myers Squibb*, 678 plaintiffs – including 592 out-of-state plaintiffs – brought a products-defect suit in California state court, alleging they suffered harm when they took the drug Plavix (which is used to inhibit blood clotting). Pet. App. 1a-3a. The defendant Bristol-Myers Squibb manufactured and marketed Plavix. *Id.* Although Bristol-Myers Squibb had five research and laboratory facilities and employees in California, it did not design or manufacture Plavix there. *Id.* at 5a. Nor did Bristol-Myers Squibb prepare the marketing materials for the drug in the State. *Id.* As for the out-of-state plaintiffs, they were not prescribed with or treated

for Plavix in California; rather, they suffered their alleged injuries elsewhere. *Id.* at 4a; *id.* at 46a-47a (Werdegar, J., dissenting).

In determining whether specific jurisdiction existed over Bristol-Myers Squibb with respect to the out-of-state plaintiffs' claims, the California Supreme Court reiterated and applied its longstanding "substantial connection" test. *Id.* at 21a-22a. Under that test, "the defendant's activities in the forum state need not be either the proximate cause or the 'but for' cause of the plaintiff's injuries." *Id.* at 22a. Rather, the "more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim"; thus, the plaintiff's claim "need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction." *Id.*

Applying this non-causation-based standard, the California Supreme Court found specific jurisdiction existed based upon Bristol-Myers Squibb's nationwide sales and marketing efforts and general business ties with California, such as its five research and laboratory facilities in the State. *Id.* at 24a-25a, 28a-29a. Tellingly, the court below acknowledged that there was "no claim that Plavix itself was designed or developed in these [California] facilities." *Id.* at 29a. Those suit-unrelated forum-state facilities therefore should have been immaterial, but instead the decision below cited the state offices as creating "an additional connection" that was somehow relevant to the specific-jurisdiction nexus analysis. *Id.*; *compare with Daimler*, 134 S. Ct. at 757 (contacts that bore "no apparent relationship to the accident that gave rise to the suit" are properly considered under general jurisdiction, not specific jurisdiction).

In sum, the California Supreme Court's "substantial connection" reasoning fails this Court's basic test of specific jurisdiction. The Court should reverse the decision below and reiterate that specific jurisdiction must be "confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Goodyear*, 564 U.S. at 919; *see Walden*, 134 S. Ct. at 1121 (specific-jurisdiction inquiry "focuses on 'the relationship among the defendant, the forum, and the litigation'") (quoting *Keeton*, 465 U.S. at 775).

II. THE SUBSTANTIAL-CONNECTION TEST APPLIED BY THE TEXAS SUPREME COURT IS SIMILARLY UNPREDICTABLE AND IMPROPERLY BLURS JURISDICTIONAL LINES

A. The Substantial-Connection Test Is Problematic In A Variety Of Contexts

Although *Bristol-Myers Squibb* concerns a nationwide products-liability action brought in California state court, a stubborn minority of state courts of last resort continues to apply the substantial-connection test across a wide variety of legal contexts.

The Texas Supreme Court applies a "substantial connection" test that similarly disavows causation principles. The Texas test provides that, for purposes of specific jurisdiction, a plaintiff's claim "arises from or relates to" the defendant's forum-state conduct when there is a "'substantial connection between [the defendant's forum-state] contacts and the operative facts of the litigation.'" *TV Azteca, S.A.B. de C.V. v. Ruiz*, 490 S.W.3d 29, 52 (Tex. 2016) (quoting *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 585 (Tex. 2007)), *pet. for cert. pending*, No. 16-481 (U.S. filed Oct. 7, 2016). Like its counterpart in California,

the Texas Supreme Court's standard explicitly rejects any requirement of a causal nexus: "Th[e] 'substantial connection' standard does not require proof that the plaintiff would have no claim 'but for' the contacts, or that the contacts were a 'proximate cause' of the liability." *Id.* at 52-53 (quoting *Moki Mac*, 221 S.W.3d at 584).[5]

B. The Texas Supreme Court's Decision In *TV Azteca* Demonstrates The Substantial-Connection Test Is Unpredictable And Unworkable

In *TV Azteca*, the Texas Supreme Court applied its "substantial connection" test in an extreme decision that illustrates how a non-causation-based rule inherently conflates general and specific jurisdiction and undermines the core policies of the Due Process Clause.

1. The plaintiff in *TV Azteca* is Gloria Ruiz, a Mexican singer "sometimes referred to as 'Mexico's Madonna.'" 490 S.W.3d at 35. In the late 1990s, at the height of her fame and fortune, Ms. Trevi was criminally charged with kidnapping and sexual assault

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[5] The Texas Supreme Court has declined to adopt the "sliding scale" approach used by the California courts, *see Moki Mac*, 221 S.W.3d at 583, but that merely illustrates that there is disagreement even among courts attempting to apply the "amorphous" substantial-connection rule. Brief of Law Professors as *Amici Curiae* in Support of Petitioners at 2, *TV Azteca, S.A.B. de C.V. v. Ruiz*, No. 16-481 (U.S. filed Nov. 14, 2016) ("[T]here is disarray even among courts applying the 'substantial connection' test, reflecting the difficulty in applying such a vague and amorphous standard."). Critically, both the Texas and the California courts agree that the "substantial connection" rule does not require any showing of causation. That feature is the dispositive one under the question presented in *Bristol-Myers Squibb*.

for allegedly luring underage girls into sexual relationships with her manager and then-boyfriend. *Id.* Ms. Trevi was eventually arrested and spent time in Brazilian and Mexican prisons, before a Mexican judge dismissed the charges against her in 2004. *Id.*

Amici – three Mexican nationals in the broadcasting industry – are the defendants in Ms. Trevi's defamation suit. TV Azteca is a Mexican national network that produces and airs the popular entertainment news program *Ventaneando* hosted by senior anchor petitioner Patricia Chapoy. *Id.* TV Azteca and its broadcasting partner, Publimax, are Mexican corporations with no offices, employees, or agents in the United States; Ms. Chapoy is a Mexican citizen who has never resided in Texas or been party to a lawsuit in the United States. *Id.*

In 2009, on the 10-year anniversary of the criminal charges against Ms. Trevi, *Ventaneando* produced a series of retrospective reports regarding Ms. Trevi's saga. Those reports were made in Mexico, by Mexican journalists, for Mexican viewers, relying upon Mexican sources, and they concerned the activities of Mexican citizens (including Ms. Trevi) in Mexico and Brazil. *Id.* at 47-48. None of *amici*, or anyone acting on their behalf, traveled to Texas to report, prepare, or film the programs. *See TV Azteca, S.A.B. de C.V. v. Ruiz*, 494 S.W.3d 109, 118 (Tex. App. 2014), *aff'd*, 490 S.W.3d 29 (Tex. 2016), *pet. for cert. pending*, No. 16-481 (U.S. filed Oct. 7, 2016). Nor did *amici* intentionally broadcast the alleged defamatory reports into Texas. Rather, because of "involuntary spillover" inherent in any broadcast signal, some over-the-air transmissions from the 2009 broadcasts bled into the United States and were received by viewers along the south Texas border. 490 S.W.3d at 49.

2. Nevertheless, Ms. Trevi sued *amici* for defamation in Texas state court, not Mexico. In evaluating whether *amici* were subject to specific jurisdiction in Texas, the Texas Supreme Court applied its "substantial connection" test and eschewed any causation-based analysis. The court found specific jurisdiction existed over *amici* based upon an improper amalgamation of general business and sales contacts with Texas, notwithstanding that those contacts are wholly unrelated to whether the 2009 television broadcasts defamed Ms. Trevi.

Notably, the Texas Supreme Court candidly acknowledged that "[t]he subject matter of the allegedly defamatory broadcasts is *completely unrelated to Texas*" because the events in question "occurred outside of and [were] completely unrelated to Texas." 490 S.W.3d at 47 (emphasis added). That should have ended the inquiry, but did not, because the Texas Supreme Court's substantial-connection rule permitted jurisdiction to be predicated on "conduct beyond the *particular business transaction at issue*" in the case. *Id.* at 54 (emphasis added). The court found *amici's* "additional conduct" in Texas justified the exercise of specific jurisdiction, based upon a smattering of sporadic and suit-unrelated business ties between *amici* and the forum state. In particular, the court cited three prior instances in which two of the *amici* were physically present in Texas unrelated to the broadcasts in question[6] and other general sales

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[6] Those contacts were: (1) between 2005 and 2009, Publimax had a business office in South Texas; (2) in 2006 or 2007, Publimax "sent or hired an employee to work in Texas" to explore expanding its operations through cable distribution; and (3) Ms. Chapoy made one trip to Laredo to promote a book (unrelated to Ms. Trevi) and a few years later made another trip to Dallas to host a live broadcast of a separate episode of

and "promotional" efforts to generate advertising revenue from Texas businesses. *Id.* at 49-51, 54-55.[7]

Tellingly, the Texas decision omits any discussion of what should be the heart of the specific-jurisdiction inquiry: whether *amici*'s forum-state conduct gave rise to Ms. Trevi's defamation claim. Indeed, the only time the Texas decision even mentions causation is when it disavows that concept as a prerequisite to specific jurisdiction. *Id.* at 52-53. As with *Bristol-Myers Squibb*, the erroneous result in *TV Azteca* shows that a substantial-connection test untethered to causation principles will undermine the core principle that specific personal jurisdiction must be based on a defendant's "*suit-related conduct*." *Walden*, 134 S. Ct. at 1121 (emphasis added).

CONCLUSION

The judgment of the court of appeals should be reversed.

Ventaneando (which was also unrelated to Ms. Trevi). 490 S.W.3d at 49-51.

[7] The Texas Supreme Court also conflated the Texas contacts of the three *amici* rather than assessing them individually – another error in its analysis. *See Calder v. Jones*, 465 U.S. 783, 790 (1984) ("Each defendant's contacts with the forum State must be assessed individually.").

Respectfully submitted,

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